

MT LEGISLATIVE HISTORY

Chapter 583 1981

Bill H _____ S 286

Original bill & hist. ☒ C

H. Committee on Judiciary ^{2/13}

S. Committee on Judiciary ^{1/24}

Hearing Date(s) 3/18 _____ C

Hearing Date(s) 1/30 _____ C

3/24 _____ C

2/4 _____ C

_____ C

2/5 _____ C

_____ C

_____ C

Date Out _____ C

_____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Jnt. Free Conference Committee:

4/14

4/22

4/23

There were no minutes for these meetings.

RETURNED TO SENATE: 3/24

TRANSMITTED TO GOVERNOR: 3/28/81
ACTION: 4/2, SIGNED
CHAPTER 231

SR 285 -- STORY -- AMENDING 85-2-316 REGARDING THE PRIORITY OF MINIMUM
FLOW RESERVATIONS...

INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE: 1/26
HEARING: 2/2
REPORT: 2/4, DO PASS
2ND READING: 2/6, YEAS: 35; NAYS: 12
3RD READING: 2/9, YEAS: 36; NAYS: 14

TRANSMITTED TO HOUSE: 2/9
REFERRED TO SELECT COMMITTEE ON WATER: 2/10
HEARING: 3/5
HEARING: 3/26
REPORT: BE NOT CONCURRED IN, 3/26
REPORT: ADOPTED, 3/26
BILL KILLED: 3/28 YEAS: 85; NAYS: 7

SB 286 -- VAN VALKENBURG -- GENERALLY REVISING THE LAWS RELATING TO THE
PRISONER FURLOUGH PROGRAM.

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/26
HEARING: 1/30
REPORT: 2/6, DO PASS AS AMENDED
2ND READING: 2/10, AS AMENDED -- YEAS: 46; NAYS: 1
3RD READING: 2/12, YEAS: 47; NAYS: 1

TRANSMITTED TO HOUSE: 2/12
REFERRED TO COMMITTEE ON JUDICIARY: 2/13
HEARING: 3/18
REPORT: 3/24, BE CONCURRED IN, AS AMENDED
2ND READING: 3/28, YEAS: 71; NAYS: 0
3RD READING: 3/31, YEAS: 92; NAYS: 5

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE NOT CONCURRED
ON MOTION, 4/13, CONFERENCE COMMITTEE APPOINTED
ON MOTION, 4/15, CONFERENCE COMMITTEE DISSOLVED
FREE CONFERENCE COMMITTEE APPOINTED

JOINT CONFERENCE COMMITTEE REPORT NO. 1: 4/14
HOUSE
2ND READING: 4/20, BE NOT CONCURRED IN MOTION
YEAS: 75; NAYS: 6
ON MOTION, 4/20, CONFERENCE COMMITTEE DISSOLVED
REFERRED TO NEW CONFERENCE COMMITTEE

CONFERENCE COMMITTEE REPORT NO. 2: 4/22
2ND READING: 4/22, YEAS: 87; NAYS: 2
ON MOTION, 4/22, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/22, YEAS: 94; NAYS: 1

SENATE
CONFERENCE COMMITTEE REPORT #2: 4/22
2ND READING: 4/23, BE CONCURRED IN
3RD READING: 4/23, YEAS: 47; NAYS: 2

TRANSMITTED TO GOVERNOR: 4/23/81
ACTION: 5/1, SIGNED
CHAPTER 583

SB 287 -- MANLEY, CONROY, GRAHAM, GALT -- PROVIDING FOR DISPOSITION OF
ABANDONED REAL PROPERTY INTERESTS ACQUIRED FOR A PUBLIC USE.
INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/26
HEARING: 2/12
REPORT: 2/19, DO PASS AS AMENDED
2ND READING: 2/24, DO PASS AS AMENDED
3RD READING: 2/25, YEAS: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/25
REPORT: 3/28, BE CONCURRED IN, AS AMENDED
2ND READING: 3/31, YEAS: 89; NAYS: 0
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.
3RD READING: 3/31, YEAS: 96; NAYS: 0

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE CONCURRED IN
ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/11, YEAS: 46; NAYS: 1

TRANSMITTED TO GOVERNOR: 4/15/81
ACTION: 4/20, SIGNED
CHAPTER 440

SB 288 -- S. BROWN -- IMPLEMENTING CONSTITUTIONAL AMENDMENT NO. 9,
REGARDING CONFIDENTIALITY OF PROCEEDINGS BEFORE THE JUDICIAL
STANDARDS COMMISSION.

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/27
HEARING: 2/3
REPORT: 2/18, DO PASS
2ND READING: 2/20, DO PASS
3RD READING: 2/24, YEAS: 50

TRANSMITTED TO HOUSE: 2/24
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/25
REPORT: 3/26, BE CONCURRED IN, AS AMENDED
2ND READING: 3/31, AS AMENDED -- YEAS: 81; NAYS: 3
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.
3RD READING: 3/31, YEAS: 91; NAYS: 1

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE CONCURRED IN
ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/11, YEAS: 47; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/15/81
ACTION: 4/20, SIGNED
CHAPTER 441

SB 289 -- LEE -- REQUIRING THE ATTORNEY GENERAL TO CHALLENGE FEDERAL
LAWS THAT IMPAIR TAXING AUTHORITY OR AUTONOMY OF THE STATE.

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/27
HEARING: 2/17
REPORT: 2/19, DO PASS AS AMENDED

SENATE BILL NO. 286

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE SENATE

January 26, 1981	Introduced and referred to Committee on Judiciary.
February 6, 1981	Committee recommend bill do pass as amended. Report adopted.
February 9, 1981	Bill printed and placed on members' desks.
February 10, 1981	Second reading, do pass as amended.
February 11, 1981	Correctly engrossed.
February 12, 1981	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 13, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on the 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 92; Noes, 5.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
April 4, 1981	On motion, consideration be passed for the day.
April 10, 1981	Second reading, amendments not concurred in
April 11, 1981	On motion Conference Committee requested and appointed.
April 15, 1981	Conference Committee dissolved. On motion Free Conference Committee requested and appointed.
April 21, 1981	Free Conference Committee dissolved. On motion, New Free Conference Committee requested and appointed.
April 22, 1981	New Free Conference Committee reported.
April 23, 1981	Second reading, new Free Conference Committee report adopted. Third reading, new Free Conference Committee report adopted. Ayes, 47; Noes, 0. Transmitted to House.

IN THE HOUSE

April 23, 1981	New Free Conference Committee report adopted.
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IN THE SENATE

April 23, 1981	Returned from House. Sent to enrolling. Reported correctly enrolled.
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1 *Sen. Va. Jalkabury* BILL NO. *286*
 2 INTRODUCED BY *Va. Jalkabury*
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; REDEFINING
 7 THE PROGRAM AS THE SUPERVISED RELEASED PROGRAM; RESTRICTING
 8 THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;
 9 TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM
 10 FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE
 11 PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR
 12 ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE
 13 PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;
 14 STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING
 15 WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;
 16 AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401,
 17 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-422, AND
 18 46-23-426, MCA; AND REPEALING SECTIONS 46-23-402 THROUGH
 19 46-23-404, 46-23-406 THROUGH 46-23-410, 46-23-413 THROUGH
 20 46-23-421, AND 46-23-423 THROUGH 46-23-425, MCA."
 21
 22 WHEREAS, a prisoner furlough program currently exists
 23 under sections 46-23-401 through 46-23-426, MCA;
 24 WHEREAS, the Legislature realizes that the above-named
 25 statutes are no longer workable and cause conflicts of laws

1 and complication of efforts;
 2 WHEREAS, the Legislature supports the basic intent of
 3 the prisoner furlough program, hereafter referred to as the
 4 supervised release program, to provide education, training,
 5 and betterment of selected prisoners and to increase such
 6 prisoners' responsibility to society; and
 7 WHEREAS, the Legislature believes that the program can
 8 be administered in a more efficient and meaningful manner.
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 46-23-401, MCA, is amended to read:
 12 "46-23-401. Definitions. Unless the context requires
 13 otherwise, in this part the following definitions apply:
 14 (1) "Applicant" means any prisoner who has signed is
 15 eligible under ~~[section 3(1)]~~ and who signs an application
 16 to participate in the prisoner-furlough supervised release
 17 program.
 18 (2) "Board" means the board of pardons provided for in
 19 2-15-2302.
 20 (3) "Department" means the department of institutions
 21 provided for in 2-15-2301.
 22 ~~(4) "Jail" means any county jail or tribal jail.~~
 23 ~~(5) (4) "Prisoner" means a person sentenced by a state~~
 24 ~~district court to a term of confinement in the state prison.~~
 25 ~~(6) (5) "State prison" means the Montana state prison~~

INTRODUCED BILL

-2-

SB 286

at Deer Lodge and ~~or~~ any adult correctional facility under the-direction-of ~~designated by~~ the department.

~~(7)(6)~~ "Supervising--agency" "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the furlough supervised release program. ~~The term does not include an employer acting in that capacity and creating an employer/employee relationship between the prisoner and itself.~~

~~(7) "Supervising agent" means a probation and parole officer of the department."~~

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough supervised release program and make rules in accordance with Title 2, chapter 4 ~~(the Montana Administrative Procedure Act)~~, to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) participating prisoner participation in an a recognized educational, treatment, or training program, ~~but not a work program;~~

(3) approval of ~~supervising-agency~~ and the sponsor;

(4) review of determinations-in-furlough--application a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;

(6) conducting revocation hearings;

(7) establishment of a program by the prisoner; and

(8) any other provisions necessary to implement [this act]."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- eligibility.

(1) Any prisoner confined-in--the--state--prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough supervised release program if he-has-served-at-least-one-half-of-the time-required-to-be--considered--for--parole--and--qualifies under--the-rules-established-by-the-department not more than 15 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department."

Section 4. Section 46-23-412, MCA, is amended to read:

1 "46-23-412. Board's action on application. ~~(1) At the~~
 2 ~~meeting of the board following the signing of any prisoner's~~
 3 ~~application--the~~ The board shall approve or deny the
 4 application of each prisoner after careful study of the
 5 prisoner's furlough release plans, criminal history, and all
 6 other pertinent case material. ~~The following rules shall be~~
 7 ~~observed when the board meets to consider an application:~~
 8 (a) ~~--Each applicant may call two witnesses from outside~~
 9 ~~or inside the institution to testify as to the applicant's~~
 10 ~~general attitude, participation in self-help activities, or~~
 11 ~~his character or job references.~~
 12 (b) ~~--An applicant may remain present during the board~~
 13 ~~proceedings on his application; however, the board may meet~~
 14 ~~in executive session without the applicant for final~~
 15 ~~decision on the application.~~
 16 (c) ~~--Each applicant shall be viewed singly and shall be~~
 17 ~~recognized as an individual.~~
 18 (d) ~~--Each applicant shall be allowed to discuss any~~
 19 ~~specific problem areas with any member of the board.~~
 20 (e) ~~--The board shall cause the applicant to be notified~~
 21 ~~of its decision immediately and shall provide the applicant~~
 22 ~~with a written decision, including a thorough statement of~~
 23 ~~the reasons for the decision, within 2 days following~~
 24 ~~adjournment.~~
 25 (2) ~~--Final authority in all matters pertaining to~~

1 prisoner furloughs is in the department. The board shall
 2 grant the applicant a hearing consistent with the procedural
 3 rules adopted by it for parole hearings pursuant to
 4 46-23-218."

5 Section 5. Section 46-23-422, MCA, is amended to read:

6 "46-23-422. Violation of furlough agreement supervised
 7 release program by prisoner == revocation. (1) If any
 8 prisoner released from actual prison confinement under the
 9 furlough program fails to comply with the rules of the
 10 furlough agreement, he shall be called by the department or
 11 by the supervising agency to appear before the department or
 12 supervising agency. If a prisoner in a supervised release
 13 program violates a condition established for the program,
 14 the department may issue a warrant for his arrest.

15 (2) If a conference is not sufficient to resolve the
 16 situation and if the prisoner continues in his
 17 noncompliance, the prisoner shall be granted a hearing
 18 on the violation within a reasonable time on or near the
 19 site of the alleged violation to determine whether a
 20 violation of the furlough agreement supervised release
 21 conditions exists. The prisoner may be represented by
 22 counsel at the hearing at his own expense. The hearing shall
 23 be conducted by a hearing officer of the board of pardons
 24 department. The prisoner on furlough shall have all
 25 opportunities provided under 46-23-1024 and 46-23-1025

1 pertaining to on-site hearings for parole revocation. If
 2 reasonable grounds are established for violation of the
 3 furlough agreement, the furlough shall be cancelled and the
 4 prisoner shall be returned to the prison. If probable cause
 5 is established that a violation of the supervised release
 6 has occurred, the prisoner shall be returned to the state
 7 prison.

8 (3) At the next meeting of the board of pardons after
 9 the return of the prisoner to the prison, the prisoner shall
 10 be granted a due process hearing in order to determine if
 11 the prisoner has in fact violated the terms of the
 12 prisoner's furlough release. If it is determined that the
 13 prisoner has in fact violated the terms of the prisoner's
 14 furlough, the prisoner shall remain at the prison. Within a
 15 reasonable time after the prisoner's return to the state
 16 prison, the board shall conduct a revocation proceeding in
 17 accordance with rules established under 46-23-405.

18 (4) If the terms of the prisoner's release have not
 19 been violated, the prisoner's case shall be assigned to a
 20 parole supervising agent and a new furlough arrangement
 21 supervised release program shall be worked out."

22 Section 6. Section 46-23-426, MCA, is amended to read:

23 "46-23-426. Escape. For the purpose of this part, the
 24 provisions relating to escape in 45-7-306 shall apply unless
 25 aggravating circumstances require a more severe penalty. A

1 person convicted of escape from a supervised release program
 2 is punishable as provided in 45-7-306. A person convicted of
 3 such an escape and sentenced therefor shall serve such
 4 sentence consecutively with the remainder of the original
 5 sentence as provided in 46-18-401."

6 Section 7. Section 45-7-306, MCA, is amended to read:

7 "45-7-306. Escape. (1) "Official detention" means
 8 imprisonment which resulted from a conviction for an
 9 offense, confinement for an offense, confinement of a person
 10 charged with an offense, detention by a peace officer
 11 pursuant to arrest, detention for extradition or
 12 deportation, supervision while under a supervised release
 13 program, or any lawful detention for the purpose of the
 14 protection of the welfare of the person detained or for the
 15 protection of society. "Official detention" does not
 16 include supervision of probation or parole, constraint
 17 incidental to release on bail, or an unlawful arrest unless
 18 the person arrested employed physical force, a threat of
 19 physical force, or a weapon to escape.

20 (2) A person subject to official detention commits the
 21 offense of escape if he knowingly or purposely removes
 22 himself from official detention or fails to return to
 23 official detention following temporary leave granted for a
 24 specific purpose or limited time.

25 (3) A person convicted of the offense of escape shall

1 be:

2 (a) imprisoned in the state prison for a term not to
3 exceed 20 years if he escapes from a state prison, county
4 jail, or city jail, or supervised release program by the use
5 or threat of force, physical violence, weapon, or simulated
6 weapon;

7 (b) imprisoned in the state prison for a term not to
8 exceed 10 years if he:

9 (i) escapes from a state prison, county jail, or city
10 jail, or supervised release program;

11 (ii) escapes from another official detention by the use
12 or threat of force, physical violence, weapon, or simulated
13 weapon; or

14 (c) fined not to exceed \$500 or imprisoned in the
15 county jail for a term not to exceed 6 months, or both, if
16 he commits escape under circumstances other than (a) and (b)
17 of this subsection."

18 Section 8. Section 45-9-101, MCA, is amended to read:

19 "45-9-101. Criminal sale of dangerous drugs. (1) A
20 person commits the offense of criminal sale of dangerous
21 drugs if he sells, barter, exchanges, gives away, or offers
22 to sell, barter, exchange, or give away or manufactures,
23 prepares, cultivates, compounds, or processes any dangerous
24 drug, as defined in 50-32-101.

25 (2) A person convicted of criminal sale of an opiate,

1 as defined in 50-32-101(18), shall be imprisoned in the
2 state prison for a term of not less than 2 years or more
3 than life, except as provided in 46-18-222.

4 (3) A person convicted of criminal sale of a dangerous
5 drug included in Schedule I or Schedule II pursuant to
6 50-32-222 or 50-32-224, except marijuana or
7 tetrahydrocannabinols, who has a prior conviction for
8 criminal sale of such a drug shall be imprisoned in the
9 state prison for a term of not less than 5 years or more
10 than life, except as provided in 46-18-222. Upon a third or
11 subsequent conviction for criminal sale of such a drug, he
12 shall be imprisoned in the state prison for a term of not
13 less than 10 years or more than life, except as provided in
14 46-18-222. Whenever a conviction under this subsection is
15 for criminal sale of such a drug to a minor, the sentence
16 shall include the restriction that the defendant be
17 ineligible for parole and participation in the ~~prisoner~~
18 ~~furrough supervised release~~ program while serving his term.

19 (4) A person convicted of criminal sale of dangerous
20 drugs not otherwise provided for in subsection (2) or (3)
21 shall be imprisoned in the state prison for a term of not
22 less than 1 year or more than life.

23 (5) Practitioners and agents under their supervision
24 acting in the course of a professional practice, as defined
25 by 50-32-101, are exempt from this section."

Section 9. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1)

The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the prisoner--furlough supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2)."

Section 10. Section 46-18-401, MCA, is amended to read:

"46-18-401. Merger of sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term except as provided in subsection (5); and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation shall be merged in any new sentence of commitment or probation.

(2) The court merging the sentences shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite the sentences being merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

1 (4) Separate sentences for two or more offenses shall
2 run concurrently unless the court otherwise orders.

3 (5) Except as provided in this subsection, whenever a
4 prisoner is sentenced for an offense committed while he was
5 imprisoned in the state prison or while he was released on
6 parole or under the ~~prisoner-furlough supervised release~~
7 program, the new sentence runs consecutively with the
8 remainder of the original sentence. The prisoner starts
9 serving the new sentence when the original sentence has
10 expired or when he is released on parole under chapter 23,
11 part 2, of this title in regard to the original sentence,
12 whichever is sooner. In the latter case, the sentences run
13 concurrently from the time of his release on parole."

14 Section 11. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 12. Repealer. Sections 46-23-402 through
21 46-23-404, 46-23-406 through 46-23-410, 46-23-413 through
22 46-23-421, and 46-23-423 through 46-23-425, MCA, are
23 repealed.

-End-

Senate COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB 246	1/23/81	2/16/81	2/20/81			2/20/81			
SB 253	1/23/81	2/16/81	2/20/81			2/20/81			
SB 265	1/26/81	2/12/81	2/14/81			2/14/81			
SB 267	1/26/81	2/13/81	2/14/81			2/14/81			
SB 268	1/26/81	2/12/81	2/12/81			2/12/81			
SB 272	1/26/81	2/13/81	2/20/81			2/20/81			
SB 277	1/26/81	2/16/81	2/18/81			2/18/81			
SB 286	1/26/81	1/30/81	2/05/81			2/05/81			
SB 287	1/26/81	2/12/81	2/19/81			2/19/81			
SB 288	1/27/81	2/03/81	2/18/81	2/18/81					
SB 289	1/27/81	2/17/81	2/19/81			2/19/81			
SB 290	1/27/81	2/17/81	2/18/81	2/18/81					
SB 305	1/28/81	2/06/81	2/06/81	2/06/81					
SB 306	1/28/81	2/06/81	2/06/81	2/06/81					
SB 308	1/28/81	2/06/81	2/06/81	2/06/81					
SB 309	1/28/81	2/09/81	2/11/81			2/11/81			

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 30, 1981

Page 1.

The sixteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 149:

Reports from the committee members revealed little or no concern on the part of local bankers relative to the passage of this bill. Senator Tveit moved that the bill not pass. His motion failed. Senator Berg moved that the bill be amended on page 1, line 11, by inserting "purposely or" after "who". The motion for the amendment carried. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried with Senator Tveit's vote being the only opposing one.

DISPOSITION OF SENATE BILL 203:

Senator S. Brown moved that the bill DO NOT PASS, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 201:

Senator Berg moved that the bill DO NOT PASS. Following discussion of the merits of the bill, his motion carried.

FURTHER CONSIDERATION OF SENATE BILL 161:

Ted Doney, representing Petro-Lewis Corp., spoke to the committee about a proposed amendment to Section 63 (marked Exhibit A and attached to these minutes), a savings clause specifically designed to protect existing limited partnerships. Senator Mazurek moved that the amendment pass. His motion carried unanimously. Senators Halligan and Mazurek agreed to work with the Secretary of State's office relative to the fee schedule for filings (marked Exhibit B and attached to these minutes). A letter and memorandum from the Secretary of State (marked Exhibits C and D and attached to these minutes) were presented.

DISPOSITION OF SENATE BILL 144:

Senator S. Brown moved that on page 1, line 12, "purposely

and" be inserted following "he"; and that additional changes be made on page 1, line 15; page 2, line 3; and page 2, line 7. Senator Mazurek moved that these amendments pass, and Senator Crippen's vote was the only dissenting one. Senator Olson moved that the bill DO PASS AS AMENDED, and Senator Crippen's vote was the only one in opposition.

CONSIDERATION OF SENATE BILL 286:

AN ACT TO GENERALLY REVISE THE LAWS
RELATING TO THE PRISONER FURLOUGH
PROGRAM.

Senator Van Valkenburg presented the bill at the request of the Department of Institutions, which is presenting the bill in order to seriously restrict the prisoner furlough program.

Curt Chisholm, Deputy Director of the Department of Institutions, spoke in favor of the bill.

Nick Rotering, legal counsel for the Department of Institutions, said that the present prisoner furlough law is unworkable, and has prompted many lawsuits. He introduced a statement of intent meant to accompany the bill (marked Exhibit E and attached to these minutes). He stated that this bill has the support of the Parole Board.

Karen Mikota stated that the League of Women Voters supports the bill, and said that they hoped that the furlough process would be streamlined through its passage.

Senator S. Brown questioned many of the bill's repealers.

DISPOSITION OF SENATE BILL 162:

Senator Mazurek moved four amendments to the bill (illustrated on attached committee report) which were designed to clarify which person contribution may be obtained from and to clarify the fact that the court may apportion the negligence among the parties. The amendments carried unanimously. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

A motion for adjournment then carried unanimously.



Senator Anderson
Chairman, Judiciary Committee

Exhibit E

STATEMENT OF INTENT

SENATE BILL 286

INTRODUCED BY VAN VALKENBURG

By the Request of the Department of Institutions

SENATE JUDICIARY COMMITTEE

A statement of intent is required for this bill because it delegates authority to the Department of Institutions to adopt rules which will include overall guidelines and criteria for the operation of the supervised release program.

Senate Bill 286 intends that the Department of Institutions carry out the provisions of this bill in order to provide better correctional policies for the supervised release program which is a replacement of the existing prisoner furlough program found in Part 4, Chapter 23 of Title 46.

The bill authorizes the Department of Institutions to adopt administrative rules which will include guidelines concerning prisoner eligibility to participate in the supervised release program. Such guidelines are intended to provide objective criteria for evaluating each individual inmates chances for success by considering the type of crime for which he is incarcerated, prior criminal history, revocation of paroles or probation, escape attempts, institutional adjustment and time to serve to parole eligibility. Each prisoner is to be given points set up under criteria and each criteria is to be weighed in accordance with its relative importance.

Further, these rules will allow that the inmate shall be responsible for developing his own program and for obtaining his own financial support where necessary.

19

The Department shall adopt rules for the supervision of the inmates while in the program outlining the responsibilities of the supervising parole officer and sponsor. Rules shall also be adopted concerning the revocation hearings and any other provisions that are needed to implement this act.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/30/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

DATE January 30

COMMITTEE ON Judiciary

SENATE BILL NO. 286

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: Karen Niskata

DATE: 1/30/81

ADDRESS: 406 W. Swamy

PHONE: 443-6287

REPRESENTING WHOM? LWI

APPEARING ON WHICH PROPOSAL: *SB 2816*

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

2)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 4, 1981

The nineteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE JOINT RESOLUTION 4:

TO URGE CONGRESS AND FEDERAL BRANCHES
TO IMPLEMENT WAYS TO MAKE GROUPS INTERVENING IN
CONSTRUCTION OF ENERGY FACILITY PROCEEDINGS
RESPONSIBLE FOR THEIR ACTS.

Senator Hafferman, District 11, Lincoln County, introduced the bill. He then introduced into the record signed petitions supporting passage of this resolution (marked Exhibit A and attached to these minutes), and spoke briefly about the importance to this state and nation of acquiring added energy sources.

Speaking briefly but fervently in support of the bill were: Jim Challinor, Libby; Bob Dennis, Libby, President and stockholder of B & J Homes, Inc.; Clarence Johnson, Libby; Don Allen, Executive Director of the Montana Petroleum Corporation; Peter Jackson, Executive Director of the W. E. T. A.; Pat Stuart, from the Coal Council, who offered an amendment (marked Exhibit B and attached to these minutes); F. H. Boles, President of the Montana Chamber of Commerce; George Johnston, ASARCO; Bill Hand, Montana Mining Association; Charlie Crane, Montana Water Development Association; and Pat Wilson, of Montco.

Senator Crippen stated that he felt the bill would deprive the environmentalists of the right to judicial review, while leaving that option open to the developing corporations.

DISPOSITION OF SENATE JOINT RESOLUTION 4:

Senator Olson moved that the bill be amended as shown on Exhibit B attached to these minutes. In a roll call vote his motion failed five to four. Senator Olson then moved that the bill pass as it stands; this motion also failed on a five to four roll call vote. Senator Crippen then moved that the bill DO NOT PASS, and his motion carried five to

four. The previous roll call vote was reversed by a unanimous decision.

FURTHER CONSIDERATION OF SENATE BILL 14:

David Niss reported that there would be ninety-seven sections of law affected by the change in the felony penalty approved by the committee. He then said that he would check into the possibility of using a codification instruction to eliminate some of the work which would be required in amending so many sections of law.

DISPOSITION OF SENATE BILL 38:

Senator Anderson suggested that it become an interim matter to be handled next session. Senator Berg moved that the bill do not pass. His motion failed. Senator Crippen then moved that the bill be amended on page 6 as shown on the attached Committee Report, and his motion passed unanimously. Senator Mazurek then moved that the bill be further amended on pages 20, 21, and 23, as shown on the attached Committee Report; and the motion passed unanimously. Senator Mazurek then moved that the bill DO PASS AS AMENDED, and the motion passed unanimously. David Niss was charged with drafting a statement of intent to accompany the Committee Report.

FURTHER CONSIDERATION OF SENATE BILL 286:

Senator Anderson said that he would discuss with Senator Van Valkenburg the problems the committee has with the repealers.

DISPOSAL OF SENATE BILL 174:

Senator Halligan moved that the bill DO PASS. Senator Crippen's vote was the only one in opposition to the motion.

FURTHER CONSIDERATION OF SENATE BILL 182:

David Niss will have complete by February 5 an amendment to remove any legal requirements now in state law that a licensed physician or nurse administer the lethal injection.

Chairman Anderson brought up the information he had collected relative to suggested committee bills which would possibly originate in this committee. Senator Berg moved that a bill or bills be drafted by David Niss relative to the matters brought up by the Jardine, Stephenson, Blewett & Weaver law firm, concerning Sections 39-3-206 and 214, MCA, and Section 71-1-320, MCA. His motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/04/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 5, 1931

The twentieth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 240:

ESTABLISHING STANDARDS FOR COLLECTION,
USE AND DISCLOSURE OF INFORMATION
GATHERED IN INSURANCE TRANSACTIONS.

Senator Anderson turned the chair over to Vice Chairman O'Hara during the consideration of this bill, and then presented the bill on behalf of the Montana Insurance Department.

Josephine Driscoll, representing the Montana Insurance Department, spoke in support of the bill and suggested that it be changed on page 35, line 25, following "4" by striking "." and inserting "and Title 33, chapter 1, part 7"; and on page 43, by striking lines 3, 4, and 5. She defined the bill as a consumer protection act.

Also speaking in support of the bill were Valencia Lane, of the Montana Insurance Department; Lester Loble, representing the American Council of Life Insurance; and Pat Melby, of the Alliance of American Insurance.

During questioning Valencia Lane stated that the scope of the bill only intended to include personal insurance and not insurance for businesses or commercial transactions.

CONSIDERATION OF SENATE BILL 319:

REQUIRING THE BUDGET DIRECTOR TO
SUBMIT THE JUDICIAL BRANCH BUDGET
WITHOUT CHANGE.

Senator Mazurek carried this bill for Senator Turnage, who had sponsored it at the request of Chief Justice Haswell.

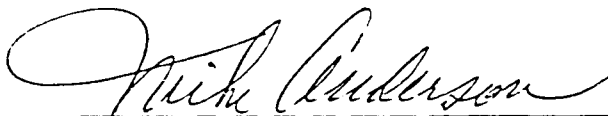
Mike Abley, representing the Montana Supreme Court, said that the bill would eliminate duplicative and an inappropriate and perhaps unconstitutional review of the Court's budget by

to the attached Committee Report, and the amendments carried unanimously. He then moved that the bill DO PASS AS AMENDED, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 286:

Senator Mazurek moved that the bill amended in its title, line 7; on page 2, line 15; and on page 13, as shown on the attached Committee Report. His amendments carried unanimously.

Senator S. Brown moved to amend the bill on page 4, line 18, as shown on the attached Committee Report, and the motion passed with only Senator O'Hara dissenting. Senator S. Brown then moved to amend the bill on page 3, line 22, and on page 3, lines 23 and 24, as shown on the attached Committee Report, and the amendments passed with Senators O'Hara and Anderson dissenting. Senator B. Brown then moved that the bill amended on page 4, lines 8 and 9, as shown on the attached Committee Report, and his motion carried unanimously. Senator Halligan moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.



Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/05/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 5, 1931

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 286

Respectfully report as follows: That SENATE Bill No. 286
be amended as follows:

1. Title, line 7.
Strike: "RELEASED"
Insert: "RELEASE"
2. Page 2, line 15.
Following: "under"
Strike: "[section 2(1)]"
Insert: "46-23-411"
3. Page 3, line 22.
Following: "a"
Insert: "work program or a"
4. Page 3, lines 23 and 24.
Following: "program"
Strike: ", but not a work program"
5. Page 4, line 8.
Following: "implement"
Strike: "[

DQ:PASS

continued

February 5, 1981

6. Page 4, line 9.

Strike: "act]"

Insert: "part"

7. Page 4, line 18.

Following: line 17

Strike: "15"

Insert: "13"

8. Page 13, line 21.

Following: "46-23-406"

Strike: "through 46-23-410,"

Insert: ", "

Following: "46-23-413 through"

Insert: "46-23-415,"

And, as so amended,

DO PASS

PA

Mike Anderson.....

Chairman.

JUDICIARY COMMITTEE

47th Legislature
SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
245	Generally revising the laws relating to health and the family.	2/21/81	Mazurek	3/12/81	Do Pass 3/17/81	3/17/81
265	Amending 72-15-301 to increase the compensation for estate public administrations.	2/21/81	Hager	3/13/81	Do Pass 3/13/81	3/13/81
267	Revising adoption, relinquishment and placement of children for adoption laws.	2/21/81	Mazurek	3/12/81	Do Pass 3/13/81	3/13/81
268	Taxing the costs of impaneling a jury against parties who fail to inform the court of a settlement.	2/19/81	Graham	3/18/81	Do Pass 3/18/81	3/18/81
286	Generally revising the laws relating to the prisoner furlough program.	2/13/81	Van Valkenburg	3/18/81	Do Pass as Amended 3/24/81	3/24/81
302	Amending 7-4-2706 to allow county attorneys to complete legal matters remaining from private practice.	2/13/81	McCallum	3/18/81	Do Pass 3/18/81	3/18/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 18, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. The following members were absent: Conn, Daily, Iverson, Huennekens, Shelden, Keedy and Teague. Jim Lear, Legislative Council, was present.

SENATE BILL 302 SENATOR MCCALLUM, sponsor, stated this bill is to amend 7-4-2704 to allow county attorneys to complete legal matters remaining from private practice. Sanders County recently had a problem with this situation. The parttime attorney resigned and there was no other attorney to take over the job parttime. They had to hire an attorney fulltime. Fulltime pay is the same regardless of the county size. SENATOR MCCALLUM stated the Association of Counties is in favor of the bill.

There were no proponents.

There were no opponents.

SENATOR MCCALLUM closed the bill.

REP. EUDAILY asked about the fiscal note concerning a constitutional problem. The Senator did not feel there was a problem.

REP. HANNAH asked how the private attorneys currently handle pending cases when they become the County Attorney. REP. YARDLEY stated the law firm usually continues the case or an agreement is worked out.

SENATE BILL 303 SENATOR MCCALLUM, sponsor, stated this bill is to amend 7-4-2706 to allow the office of the County Attorney to be reduced to a parttime position. Each particular county could negotiate whether the position would be full or parttime.

There were no proponents.

There were no opponents.

The Senator closed the bill.

No questions were asked by the committee.

SENATE BILL 286 DAN RUSSELL, Department of Institutions, presented the bill in the absence of SENATOR VAN VALKENBERG. This bill would generally revise the laws which relate to the prisoner furlough program. The program would be defined as a release program and would restrict the time qualification for prisoner eligibility. He said

there are only three prisoners currently out on the furlough program. A prisoner can be out when he is half way to parole. It is suggested in the bill that we require at least 18 months to parole before being eligible for furlough program. Also, if a prisoner leaves the program, it is a misdemeanor. It is hard, also, to bring them back if they go to another state. Rather than the sponsor of the inmate having the prime supervisory responsibility, the parole office should. The law as it is now is non-functional. There are people who should qualify under this program. EXHIBIT 1 was given to the committee.

NICK ROTERING of the Legal Department of the Department of Institutions, gave a brief overview of the background of this law. The department has amended the law in two previous sessions and had three attorney general opinions. It is a nightmare to administer but it is a good type of program. The proposal is to make the time 18 months before release when they may apply. The bill places a great deal of authority on the department in the rule-making authority area. There have only been 52 people since 1975 who have gone out on the program. Some people should qualify and would benefit from this program.

During questions from the committee, REP. HANNAH asked if it is such a bad law, why not take it off the books. ROTERING replied that SENATOR RYAN's bill would have done that, but the Code Commissioners did not want to eliminate the whole law and start over again.

REP. HANNAH asked what the result of the proposed changes would be. ROTERING said it would give control to the department as to who will be eligible. It would make the program more available to the people who need this type of help. It would be available to those who will be out in about 18 months anyway.

REP. YARDLEY asked if this bill had a Statement of Intent. The answer was yes but all committee members had not yet received copies.

CHAIRMAN KEYSER stated it appeared the department is going into a supervisory release program. He felt all furlough programs should be repealed. ROTERING said the department originally did that and ended up with nine sections to a new bill.

CHAIRMAN KEYSER asked how the department will deal with this because the sections asking for amendment are dealing with furlough release program only. ROTERING said the name has changed from furlough to supervisory release and that it would be the same program under a new name. It has never really been a furlough program because if someone takes three days to attend a funeral and then returns, that is a furlough. Or, if the inmate goes to school during the day but

returns to prison at night, that is a furlough.

REP. KEYSER said if it does go to a supervisory release program, it will remove responsibility from the department and the agency should not be released from any responsibility. ROTERING replied that on page 3, section 2, it shows that the department is not abdicating any responsibility. The major change is the sponsor's role in the community because it is not workable. A parole officer will take over the responsibility of the prisoner. REP. KEYSER said that section states that you are responsible. It probably should not be repealed. ROTERING said that by repealing that one section, the department is divesting itself. We feel we would give the department greater control.

SENATOR VAN VALKENBERG said that the Senate felt there should be a program for people who are out on work, but not in school or in a training program. If they could get an acceptable job, they should be allowed to do that. The Board of Pardons has been concerned because the language read that a person could go out on a work release program as long as it goes along with a school or treatment situation. On page 3, line 22, it says you can have a work program. The definition was to eliminate the reference to sponsor.

SENATOR VAN VALKENBERG closed the bill saying this program is important but it needs to be more practical. The prison is at capacity and a safety valve is needed. There are about 150 prisoners who could be released if there is a proper program. It is a good alternative to prison. On behalf of the Board of Pardons, the Senator urged the committee to amend the bill on page 3, line 22 by striking "WORK PROGRAM OR A" & following "program" on line 24 insert "or work program in conjunction with any of the above." The hearing on Senate Bill 286 closed.

SENATE BILL 448 DAN RUSSELL presented the bill in the absence of SENATOR MIKE ANDERSON. This bill was introduced at the request of the Senate Judiciary Committee. This bill would permit the Department of Institutions to contract with public or private corporations for the confinement of certain inmates. It would place inmates on a prerelease basis.

NICK ROTERING, Department of Institutions, said that some legislation is needed in order that the state can contract with certain corporations for the placement of inmates. It could also be used in transferring inmates from one place to another. The department would do this with organizations within the state. There currently is a placement house in Billings called Alpha House which the department has been using.

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Exhibit 1

STATEMENT OF INTENT

SENATE BILL 286

INTRODUCED BY VAN VALKENBURG

By the Request of the Department of Institutions

SENATE JUDICIARY COMMITTEE

A statement of intent is required for this bill because it delegates authority to the Department of Institutions to adopt rules which will include overall guidelines and criteria for the operation of the supervised release program.

Senate Bill 286 intends that the Department of Institutions carry out the provisions of this bill in order to provide better correctional policies for the supervised release program which is a replacement of the existing prisoner furlough program found in Part 4, Chapter 23 of Title 46.

The bill authorizes the Department of Institutions to adopt administrative rules which will include guidelines concerning prisoner eligibility to participate in the supervised release program. Such guidelines are intended to provide objective criteria for evaluating each individual inmates chances for success by considering the type of crime for which he is incarcerated, prior criminal history, revocation of paroles or probation, escape attempts, institutional adjustment and time to serve to parole eligibility. Each prisoner is to be given points set up under criteria and each criteria is to be weighed in accordance with its relative importance.

Further, these rules will allow that the inmate shall be responsible for developing his own program and for obtaining his own financial support where necessary.

✓

The Department shall adopt rules for the supervision of the inmates while in the program outlining the responsibilities of the supervising parole officer and sponsor. Rules shall also be adopted concerning the revocation hearings and any other provisions that are needed to implement this act.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 286

Date 3/18/81

SPONSOR Vanvalkenburg

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE *House*
March 24, 1981

The House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 33 DIANA DOWLING, Legislative Council, presenting the bill for SENATOR GOODOVER, stated this bill is to amend numerous sections consistent with the mandate to the Code Commissioner contained in 1-11-204. In 1975 the council started to recodify the laws. Work was performed for four years and the bill was passed in 1979. During the process the council read three million words in which there were many inconsistencies and errors. No one was comparing the various sections. DOWLING believed this bill will eliminate archaic, duplicative and inconsistent laws and clarify the existing law. The information is contained in one bill this session as compared to many bills as in previous sessions. The entire legal staff of the legislative council has worked on the bill. The council has no personal interest in the bill.

BOB PYFER, representing Code Commissioner, stated each attorney from the Legislative Council would present his sections of the bill.

CORT HARRINGTON, representing the Code Commissioner, stated Title 1, section 1 deals with the Code Commissioner and recodification. The amendment on page 2, lines 21-22 clarifies the language. During the '79 session there was a bill that reorganized the property classification system. A property break was given to low income people. Section 16-6-116 was amended and then repealed. The code commissioner should have codified this in the new section. This amendment puts in the language of the bill in 15-6-134. Only the legislature can reenact it.

HARRINGTON stated that different sections amended laws repealed. Section 72 deals with retirement system. An error is being corrected in this section which should be 19-11-512(6) instead of 19-11-512(5). Line 5, page 67 should be subsection 6 instead of subsection 5. Section 73 deals with school personnel. The amendments made will clarify the law.

Section 74, the use of sovereignty, is being removed. Section 75 removes redundant language. In Section 78 of title 13, chapter 18 is being repealed. Section 79 changes the wording from police officer to peace officer since that is defined and police officer is not. Section 133 has language that was inconsistent. The new wording makes it constitutional. Section 182 removes a reference to dower, which is obsolete. Section 183 also removes reference to dower. Section 184 changes judgment roll to judicial record.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:30 a.m.

SENATE BILL 286 REP. HANNAH moved do pass.

REP. HANNAH stated the legislature has a responsibility to clean up what is a headache of the Department of Administration. The testimony showed year after year they have tried to fix this. REP. MATSKO stated the bill could really help people that are not eligible. There is no way of handling them when they get outside. REP. MATSKO endorsed the bill.

REP. IVERSON stated the most ideal thing would be to repeal it all. He wondered if that could be accomplished in this session. If an attempt was made to repeal it and it failed something should be done so the department will not have to suffer. It is a matter of strategy. REP. KEYSER stated the present program is not working. They have tried to change it every year.

REP. BENNETT moved to amend page 3, line 22 adding "or work program in conjunction with any of the above programs" and to strike "program or a". The amendment carried unanimously.

REP. MATSKO asked if section 46-23-421 were repealed would that take away the department's authority. DAN RUSSELL, Department of Administration, stated the supervising agency was in reference to another group of people. There is no problem with the contents in there.

REP. KEEDY moved to add 46-23-421 to the bill and amend it by inserting "supervising agency" in place of department. The reference to furlough would be stricken. The motion carried unanimously.

REP. KEEDY also moved on page 6, line 24 to strike "exists" following "conditions" and to insert "occurred". The amendment carried.

REP. KEEDY felt the language on page 4, line 18 means that any prisoner who is designated as a nondangerous offender would be eligible for parole within a period of 2 1/2 years. REP. HUENNEKENS asked how long the prisoner would have to be in prison before he would accumulate time for parole. REP. KEEDY replied a prisoner who was sentenced for six years could be eligible after 1/4 of the time is spent, or 18 months. A prisoner should be required to spend some time in incarceration.

REP. HANNAH asked if the language on line 14, page 4 makes it easier to qualify. Yes was the reply. REP. DAILY stated this section has been stricken yet the House Judiciary Committee last session added that language. REP. HANNAH asked why change it. RUSSELL replied the total reason is to restrict it. Most programs do not last more than a year.

REP. KEEDY moved to amend page 4, line 15 following "every" to reinsert the stricken language on lines 15 and 16 through "and" on line 18, and to strike 18 and insert 15. The amendment carried.

REP. KEEDY stated page 2, line 3 when an offender is convicted to ten years it does not appear what it should be. RUSSELL stated by statute it does not say Montana State Prison. They have the authority to move the prisoner around under other codes. REP. KEEDY asked if there were any pending under control of a private corporation. RUSSELL stated we do not want to be in the business to place people in the Alpha House for a year.

REP. KEEDY asked the reason for striking "or direction of" and inserting the new language. RUSSELL stated if the department was given authority to start another program that would give them the authority. REP. KEEDY felt it was an ill-advised amendment. It would require a judge to sentence offenders to Montana State Prison. RUSSELL responded the department would designate where the prisoner would go. REP. TEAGUE stated the prisoner would still be confined and the department should be able to decide where he will be held. RUSSELL stated the department has placed prisoners in facilities throughout the United States; they are not all in Montana State Prison.

REP. EUDAILY asked if a statement of intent was necessary. JIM LEAR stated the question was raised in the Senate Judiciary Committee. The bill does not create new rule-making authority. If the committee decides a statement of intent is necessary the bill will have to be sent back to the Senate Judiciary Committee to be adopted. REP. EUDAILY felt with the amendments the bill would have to go back to the committee anyway. JIM LEAR responded the rules of the legislature indicate the first committee that receives the bill is to adopt the statement of intent. REP. EUDAILY asked about subsection 3. JIM LEAR replied it is broad rulemaking under the existing language.

REP. KEEDY moved to strike "may" and insert "shall" on page 6, line 14. REP. MATSKO disagreed with the amendment stating a violation could be a technical violation of some minor condition that could be magnified. REP. CONN agreed that a violation such as being tardy would reflect badly because of the technicality.

V

REP. KEEDY stated the prisoner would be granted a hearing. The new language on page 7 makes it clear that the person is to be returned to the state prison if he is found to be in violation. RUSSELL stated the intent was to take into consideration the language that was struck for minor situations. The department has no authority to issue a warrant. There are situations that say you will attend programs weekly, if that is one of the person's problems. The department could not afford to have hearings each time there was a minor technical infraction. Many of these problems can be dismissed in the office by talking to the prisoner. The amendment failed with only REP. DAILY voting for it.

REP. KEEDY moved to amend line 6, page 14 inserting "upon a second or subsequent violation the department shall issue a warrant for the prisoner's arrest". RUSSELL stated the department has not warrant authority presently.

REP. CONN stated since the committee does not know the people and the various circumstances it should be left up to the board. REP. MATSKO supported the amendment. The first time it happens counseling should occur, the second time a warrant and hearing would be issued. It is a proper way to handle it.

The amendment resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, CURTISS, MATSKO, MCLANE, ABRAMS, and KEEDY. Those voting no were: CONN, EUDAILY, SHELDEN, TEAGUE and YARDLEY. The amendment carried 7 to 5.

REP. CONN moved do pass as amended. The motion carried with REP. SEIFERT voting no. REP. KEEDY was assigned to carry the bill.

SENATE BILL 240 REP. SEIFERT moved do pass.

REP. KEEDY moved amendment 1 on EXHIBIT 1 be adopted. This deals with the medical record information as supplied to insurance companies. That information is at the request of the individual to whom it pertains. This amendment would make the purpose for insurance agent designated is directed to receive the information. REP. CONN asked if this would compel the doctor to give information to the patient. REP. KEEDY stated at the individual's request it would. The amendment carried with MCLANE and CONN opposing.

The second amendment was moved by REP. KEEDY. This deals with adverse underwriting decisions. This language is necessary so it will be in accordance with subsection 3. The individual can

Respectfully report as follows: That.....

BE AMENDED AS FOLLOWS:

1. Title, line 17.

Following: "46-23-412,"

Insert: "46-23-421,"

2. Title, line 20.

Following: "46-23-415,"

Strike: "46-23-421,"

3. Page 3, lines 22 and 23.

Following: "a" on line 22

Strike: remainder of line 22 through "A" on line 23

4. Page 3, line 24.

Following: "program"

Insert: "or work program in conjunction with any of the above programs"

5. Page 4, line 17.

Following: "department"

Insert: "if he has served at least one-half of the time required to be considered for parole and"

6. Page 4, line 18.

Following: "15"

Strike: "18"

Insert: "15"

7. Page 6.

Following: line 4

Insert: "Section 5. Section 46-23-421, MCA, is amended to read:

"46-23-421. Responsibility of department and supervising agency agent. The department shall be responsible for the activities of a prisoner participating in a furlough supervised release program under this part. The department may delegate jurisdictional supervision of work-furlough-participants to the adult-parole-and-probation-field-service.--~~The-supervising-agency~~ a supervising agent who shall be responsible for these the activities of a furloughed the prisoner during his supervised release ~~for which it is responsible in the written furlough agreement.~~"

Renumber: subsequent sections

8. Page 6, line 14.

Following: "."

Insert: "Upon a second or subsequent violation the department shall issue a warrant for the prisoner's arrest."

9. Page 6, line 21.

Following: "conditions"

Strike: "exists"

Insert: "occurred"

10. Page 13, line 22.

Following: "46-23-415,"

Strike: "46-23-421,"

April 14, 1981¹⁹

JOINT CONFERENCE COMMITTEE
ON HOUSE AMENDMENTS TO SENATE BILL NO. 286

(Report No. 1, April 14, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Bill No. 286, met April 14, 1981, and considered:

House Judiciary Committee Amendments to the third reading copy, dated March 25, 1981, and recommend as follows:

That the Senate accede to Committee amendment nos. 1 through 4 and 6 through 10.

That the House recede from Committee amendment no. 5;

That the reference copy of Senate Bill No. 286 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Committee Report to Senate Bill No. 286 be adopted.

CLERICAL INSTRUCTIONS:

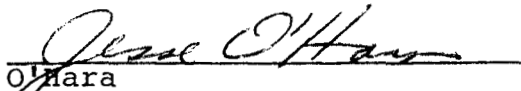
1. Page 4, lines 19 through 21.

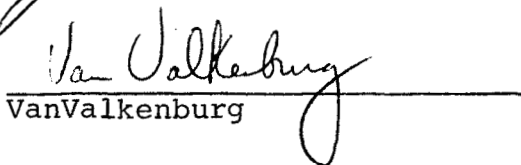
Following: "~~department~~"

Strike: "HE HAS SERVED AT LEAST ONE-HALF OF THE TIME
REQUIRED TO BE CONSIDERED FOR PAROLE AND"

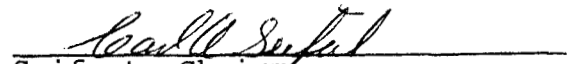
FOR THE SENATE:

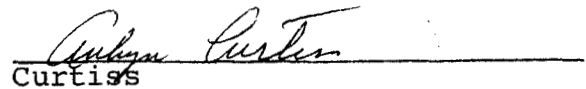

Anderson, Chairman


O'Hara


VanValkenburg

FOR THE HOUSE:


Seifert, Chairman


Curtiss


Wardley

April 22

1981

JOINT CONFERENCE COMMITTEE
ON HOUSE AMENDMENTS TO SENATE BILL NO. 286

(Report No. 2, April 22, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Bill No. 286,
met April 22, 1981, and considered:

House Judiciary Committee Amendments to the third reading
copy, dated March 25, 1981, and recommend as follows:

That the Senate accede to Committee amendment nos. 1 through 10;

That the reference copy of Senate Bill No. 286 remain unchanged;

And, that the Conference Committee Report to Senate Bill
No. 286 be adopted.

FOR THE SENATE:

Mike Anderson
Anderson, Chairman

James O'Hara
O'Hara

Fred A. VanValkenburg
VanValkenburg

FOR THE HOUSE:

Donald Seifert
Seifert, Chairman

Calvin Curtiss
Curtiss

Michael H. Keedy
Keedy

SENATE BILL NO. 286

INTRODUCED BY VAN VALKENBERG

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; REDEFINING THE PROGRAM AS THE SUPERVISED ~~RELEASED~~ RELEASE PROGRAM; RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY; TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER; STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED; AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401, 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, AND 46-23-426, MCA; AND REPEALING SECTIONS 46-23-402 THROUGH 46-23-404, 46-23-406 ~~THROUGH~~ 46-23-410, 46-23-413 THROUGH 46-23-415, 46-23-423, AND 46-23-423 THROUGH 46-23-425, MCA."

WHEREAS, a prisoner furlough program currently exists under sections 46-23-401 through 46-23-426, MCA;

WHEREAS, the Legislature realizes that the above-named

statutes are no longer workable and cause conflicts of laws and complication of efforts;

WHEREAS, the Legislature supports the basic intent of the prisoner furlough program, hereafter referred to as the supervised release program, to provide education, training, and betterment of selected prisoners and to increase such prisoners' responsibility to society; and

WHEREAS, the Legislature believes that the program can be administered in a more efficient and meaningful manner.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-401, MCA, is amended to read:

"46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who ~~has signed~~ is eligible under [section 46-23-411] 46-23-411 and who signs an application to participate in the prisoner--furlough supervised release program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of institutions provided for in 2-15-2301.

~~(4) "Jail" means any county jail or tribal jail.~~

~~(5) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.~~

~~(6)~~(5) "State prison" means the Montana state prison at Deer Lodge and or any adult correctional facility under the-direction-of designated by the department.

~~(7)~~(6) "Supervising--agency" "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the furlough supervised release program. ~~The term--does--not--include--an employer--acting--in--that--capacity--and--creating--an employer/employee--relationship--between--the--prisoner--and itself.~~

(7) "Supervising agent" means a probation and parole officer of the department."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) participating prisoner participation in an WORK PROGRAM-OR-A recognized educational, treatment, or training program; ~~but--not--a--work--program~~ OR WORK PROGRAM IN

CONJUNCTION WITH ANY OF THE ABOVE PROGRAMS;

(3) approval of supervising-agency~~t~~ and the sponsor;

(4) review of determinations-in-furlough-applications; a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;

(6) conducting revocation hearings;

(7) establishment of a program by the prisoner; and

(8) any other provisions necessary to implement this act PARJ."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- eligibility.

(1) Any prisoner confined--in--the--state--prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough supervised release program if he-has-served-at-least--one-half--of--the time--required--to--be--considered--for-parole-and-qualifies under-the-rules-established-by-the-department HE HAS SERVED AT LEAST ONE-HALF OF THE TIME REQUIRED TO BE CONSIDERED FOR PAROLE AND not more than 15 to 15 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department."

Section 4. Section 46-23-412, MCA, is amended to read:

"46-23-412. Board's action on application. (1) At the meeting of the board following the signing of any prisoner's application, the board shall approve or deny the application of each prisoner after careful study of the prisoner's furlough release plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:

(a) Each applicant may call two witnesses from outside or inside the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references.

(b) An applicant may remain present during the board proceedings on his application; however, the board may meet in executive session without the applicant for final decision on the application.

(c) Each applicant shall be viewed singly and shall be recognized as an individual.

(d) Each applicant shall be allowed to discuss any specific problem areas with any member of the board.

(e) The board shall cause the applicant to be notified of its decision immediately and shall provide the applicant

with a written decision including a thorough statement of the reasons for the decision within two days following adjournment.

(2) Final authority in all matters pertaining to prisoner furloughs is in the department. The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218."

SECTION 5. SECTION 46-23-421, MCA, IS AMENDED TO READ:

"46-23-421. Responsibility of department and supervising agency agent. The department shall be responsible for the activities of a prisoner participating in a furlough supervised release program under this part. The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field services. The supervising agency a supervising agent who shall be responsible for those the activities of a furloughed the prisoner for which it is responsible in the written furlough agreement during his supervised release."

Section 6. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement supervised release program by prisoner -- revocation. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or

by the supervising agency to appear before the department or supervising agency. If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. UPON A SECOND OR SUBSEQUENT VIOLATION THE DEPARTMENT SHALL ISSUE A WARRANT FOR THE PRISONER'S ARREST.

(2) ~~If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the~~ The prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement supervised release conditions exists OCCURRED. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons department. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. ~~If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison. If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.~~

(3) ~~At the next meeting of the board of pardons after~~

~~the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.~~

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole supervising agent and a new furlough arrangement supervised release program shall be worked out."

Section 7. Section 46-23-426, MCA, is amended to read:

"46-23-426. Escape. ~~For the purpose of this part, the provisions relating to escape in 45-7-306 shall apply unless aggravating circumstances require a more severe penalty. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.~~"

Section 8. Section 45-7-306, MCA, is amended to read:

"45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an

1 offense, confinement for an offense, confinement of a person
 2 charged with an offense, detention by a peace officer
 3 pursuant to arrest, detention for extradition or
 4 deportation, supervision while under a supervised release
 5 program, or any lawful detention for the purpose of the
 6 protection of the welfare of the person detained or for the
 7 protection of society. "Official detention" does not
 8 include supervision of probation or parole, constraint
 9 incidental to release on bail, or an unlawful arrest unless
 10 the person arrested employed physical force, a threat of
 11 physical force, or a weapon to escape.

12 (2) A person subject to official detention commits the
 13 offense of escape if he knowingly or purposely removes
 14 himself from official detention or fails to return to
 15 official detention following temporary leave granted for a
 16 specific purpose or limited time.

17 (3) A person convicted of the offense of escape shall
 18 be:

19 (a) imprisoned in the state prison for a term not to
 20 exceed 20 years if he escapes from a state prison, county
 21 jail, or city jail, or supervised release program by the use
 22 or threat of force, physical violence, weapon, or simulated
 23 weapon;

24 (b) imprisoned in the state prison for a term not to
 25 exceed 10 years if he:

1 (i) escapes from a state prison, county jail, or city
 2 jail, or supervised release program;

3 (ii) escapes from another official detention by the use
 4 or threat of force, physical violence, weapon, or simulated
 5 weapon; or

6 (c) fined not to exceed \$500 or imprisoned in the
 7 county jail for a term not to exceed 6 months, or both, if
 8 he commits escape under circumstances other than (a) and (b)
 9 of this subsection."

10 Section 9. Section 45-9-101, MCA, is amended to read:

11 "45-9-101. Criminal sale of dangerous drugs. (1) A
 12 person commits the offense of criminal sale of dangerous
 13 drugs if he sells, barter, exchanges, gives away, or offers
 14 to sell, barter, exchange, or give away or manufactures,
 15 prepares, cultivates, compounds, or processes any dangerous
 16 drug, as defined in 50-32-101.

17 (2) A person convicted of criminal sale of an opiate,
 18 as defined in 50-32-101(18), shall be imprisoned in the
 19 state prison for a term of not less than 2 years or more
 20 than life, except as provided in 46-18-222.

21 (3) A person convicted of criminal sale of a dangerous
 22 drug included in Schedule I or Schedule II pursuant to
 23 50-32-222 or 50-32-224, except marijuana or
 24 tetrahydrocannabinols, who has a prior conviction for
 25 criminal sale of such a drug shall be imprisoned in the

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1 state prison for a term of not less than 5 years or more
 2 than life, except as provided in 46-18-222. Upon a third or
 3 subsequent conviction for criminal sale of such a drug, he
 4 shall be imprisoned in the state prison for a term of not
 5 less than 10 years or more than life, except as provided in
 6 46-18-222. Whenever a conviction under this subsection is
 7 for criminal sale of such a drug to a minor, the sentence
 8 shall include the restriction that the defendant be
 9 ineligible for parole and participation in the prisoner
 10 furlough supervised release program while serving his term.

11 (4) A person convicted of criminal sale of dangerous
 12 drugs not otherwise provided for in subsection (2) or (3)
 13 shall be imprisoned in the state prison for a term of not
 14 less than 1 year or more than life.

15 (5) Practitioners and agents under their supervision
 16 acting in the course of a professional practice, as defined
 17 by 50-32-101, are exempt from this section."

18 Section 10. Section 46-18-202, MCA, is amended to
 19 read:

20 "46-18-202. Additional restrictions on sentence. (1)
 21 The district court may also impose any of the following
 22 restrictions or conditions on the sentence provided for in
 23 46-18-201 which it considers necessary to obtain the
 24 objectives of rehabilitation and the protection of society:

25 (a) prohibition of the defendant's holding public

1 office;

2 (b) prohibition of his owning or carrying a dangerous
 3 weapon;

4 (c) restrictions on his freedom of association;

5 (d) restrictions on his freedom of movement;

6 (e) any other limitation reasonably related to the
 7 objectives of rehabilitation and the protection of society.

8 (2) Whenever the district court imposes a sentence of
 9 imprisonment in the state prison for a term exceeding 1
 10 year, the court may also impose the restriction that the
 11 defendant be ineligible for parole and participation in the
 12 prisoner--furlough supervised release program while serving
 13 his term. If such a restriction is to be imposed, the court
 14 shall state the reasons for it in writing. If the court
 15 finds that the restriction is necessary for the protection
 16 of society, it shall impose the restriction as part of the
 17 sentence and the judgment shall contain a statement of the
 18 reasons for the restriction.

19 (3) The judge in a justice's, city, or municipal court
 20 does not have the authority to restrict an individual's
 21 rights as enumerated in subsections (1) and (2)."

22 Section 11. Section 46-18-401, MCA, is amended to
 23 read:

24 "46-18-401. Merger of sentences. (1) Unless the judge
 25 otherwise orders:

1 (a) whenever a person serving a term of commitment
 2 imposed by a court in this state is committed for another
 3 offense, the shorter term or shorter remaining term shall be
 4 merged in the other term except as provided in subsection
 5 (5); and

6 (b) whenever a person under suspended sentence or on
 7 probation for an offense committed in this state is
 8 sentenced for another offense, the period still to be served
 9 on suspended sentence or probation shall be merged in any
 10 new sentence of commitment or probation.

11 (2) The court merging the sentences shall immediately
 12 furnish each of the other courts and penal institutions in
 13 which the defendant is confined under sentence with
 14 authenticated copies of its sentence, which must cite the
 15 sentences being merged.

16 (3) If an unexpired sentence is merged pursuant to
 17 subsection (1), the court which imposed such sentence shall
 18 modify it in accordance with the effect of the merger.

19 (4) Separate sentences for two or more offenses shall
 20 run concurrently unless the court otherwise orders.

21 (5) Except as provided in this subsection, whenever a
 22 prisoner is sentenced for an offense committed while he was
 23 imprisoned in the state prison or while he was released on
 24 parole or under the prisoner-furlough supervised release
 25 program, the new sentence runs consecutively with the

1 remainder of the original sentence. The prisoner starts
 2 serving the new sentence when the original sentence has
 3 expired or when he is released on parole under chapter 23,
 4 part 2, of this title in regard to the original sentence,
 5 whichever is sooner. In the latter case, the sentences run
 6 concurrently from the time of his release on parole."

7 Section 12. Severability. If a part of this act is
 8 invalid, all valid parts that are severable from the invalid
 9 part remain in effect. If a part of this act is invalid in
 10 one or more of its applications, the part remains in effect
 11 in all valid applications that are severable from the
 12 invalid applications.

13 Section 13. Repealer. Sections 46-23-402 through
 14 46-23-404, 46-23-406 through ~~46-23-410~~, 46-23-413 through
 15 ~~46-23-415~~, 46-23-421, and 46-23-423 through 46-23-425, MCA,
 16 are repealed.

-End-